



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Lee Presnell
County Attorney
Upshur County
Gilmer, Texas

Dear Sir:

Opinion No. O-5228

Re: Whether the Commissioners' Court of Upshur County has the legal authority to allow a constable a stipulated amount per month for expenses of his office under the facts stated and related matters.

Your letter of November 8, 1943, requested the opinion of this department on the questions stated therein reads in part as follows:

*STATEMENT

A constable of Upshur County has made a written request of the Commissioners' Court that a fixed amount of \$80.00 per month be allowed him to be used as expenses of his office, same to be paid out of the general fund of the county. All precinct officers of Upshur County are on a fee basis, whereas county officers are on a salary basis. The precinct official does not exceed any maximum amount in fees that are allowed by law.

QUESTIONS

1. Does the Commissioners' Court have authority to allow a constable a stipulated amount per month for expenses of his office?

2. In case the precinct official in question files monthly reports with the Commissioners' Court,

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showing in same a detailed report of expenses incurred by him in the discharge of the duties of his office, does the Commissioners' Court have the authority to allow from the general fund of the county the amount shown in the report?

3. In case the precinct official is serving on a fee basis in a county where all county officials have been placed on a salary basis, would this modify or change the answer to either of the above questions?"

Section (a) of Article 3899, Vernon's Annotated Civil Statutes, reads in part as follows:

"(a) At the close of each month of his tenure of office, each officer named herein who is compensated on a fee basis shall make, as part of the report now required by law, an itemized and sworn statement of all the actual and necessary expenses incurred by him in the conduct of his office, such as stationery, stamps, telephone, premiums on officials' bonds including the cost of surety bonds for his deputies, premium on fire, burglary, theft, robbery insurance protecting public funds, traveling expenses, and other necessary expenses; provided, that in addition to the officers named herein, the county treasurer, county auditor, county road commissioners, county school superintendent, and the hide and animal inspector shall likewise make a report on the premiums on officials' bonds, including the cost of surety bonds for any deputies, and said premiums shall be subject to payment out of the fees of said office, as herein otherwise provided for the officers named; and provided further that if any of the officers so designated are on a salary rather than a fee basis, then all such bond premiums for officers and their deputies shall be paid from the General Fund of the County. The Commissioners Court of the county of the sheriff's residence may, upon the written and sworn application of the sheriff stating the necessity therefor, purchase equipment for a Bureau of Criminal Identification such as cameras, fingerprint cards, inks, chemicals, microscopes, radio and laboratory equipment, filing cards, filing cabinets, tear gas, and other equipment in keeping with the system in use by the Department of Public

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Safety of this State or the United States Department of Justice and/or Bureau of Criminal Identification. If such expenses be incurred in connection with any particular case, such statement shall name such case. Such expense account shall be subject to the audit of the county auditor, if any, otherwise by the Commissioners Court; and if it appears that any item of such expense was not incurred by such officer or such item was not a necessary expense of office, such item shall be by such auditor or court rejected, in which case the collections of such item may be adjudicated in any court of competent jurisdiction. The amount of salaries paid to assistants and deputies shall also be clearly shown by such officer, giving the name, position, and amount paid each; and in no event shall any officer show any greater amount than actually paid any such assistant or deputy. The amount of such expenses, together with the amount of salaries paid to assistants, deputies, and clerks, shall be paid out of the fees earned by such officer. "

It will be noted that the foregoing statute expressly provides that the expenses incurred by any officer who is compensated on a fee basis shall pay the expenses incurred by him in the conduct of his office out of the fees earned by such officer. However, said section authorizes the Commissioners Court of the County of the Sheriff's residence upon the written and sworn application of the Sheriff stating the necessity therefor to allow one or more automobiles to be used by the Sheriff in the discharge of his official duties to be purchased by the County and paid out of the General Fund of the County. We are not concerned with this particular expense in this opinion; therefore, we deem it unnecessary to discuss the same further.

In answer to your first question, you are especially advised that the Commissioners Court of Upshur County, under the facts stated, has no legal authority to allow a constable a stipulated amount for expenses incurred in the conduct of his office.

Answering your second question, you are advised that the Commissioners Court has no legal authority to allow a constable who is compensated on a fee basis any money whatsoever for expenses incurred by him in the conduct of his office from the General Fund or any other fund of the county, that such expenses must be paid out of the fees earned by such officer.

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We now consider your third question. The fact that the county officials of said county are compensated on an annual salary basis would not modify or change the answers to the above first and second questions in your inquiry.

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED NOV 26, 1943

Gerald C. Mann *Ardell Williams*

ATTORNEY GENERAL OF TEXAS

By

Ardell Williams
Assistant

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